



MITCHELL E. DANIELS, JR., *Governor*

JAMAL L. SMITH, *Executive Director*

ICRC No. EMra11060269
[REDACTED]

[REDACTED],
Complainant,

vs.

PAPA JOHN'S PIZZA,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice has occurred. 910 IAC 1-3-2(b)

On May 31, 2011, [REDACTED] ("Complainant"), filed a complaint with the Commission against Papa John's Pizza ("Respondent") alleging race discrimination in violation of the Indiana Civil Rights Law (IC 22-9, et seq) and [REDACTED]. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated and/or denied employment by Respondent due to her race. In order to prevail on such a claim, Complainant must show that (1) she is a member of a protected class; (2) she suffered an adverse employment action; (3) she was meeting Respondents legitimate business expectations; or (4) similarly-situated employees of a different race were treated more favorably.

Complainant is a member of a protected class due to her race. There is no dispute about the fact that Complainant suffered an adverse employment action when Respondent terminated her employment and refused to re-employ her. The only remaining questions are whether Complainant was meeting her employer's legitimate performance expectations or, if not, whether Respondent has afforded more favorable treatment to others who failed to meet those same performance expectations.

Available evidence indicates that Complainant's last day at work was March 24, 2011. Evidence indicates that Complainant then took some time off work to attend funeral of a family member out of state for a period of several days or even weeks. Complainant then requested that she be



placed back on the schedule, at which time she was told that she was no longer employed with Respondent. During the time Complainant was out of state, Respondent changed management. The new manager claims to have not known Complainant was an employee when she requested to be put back on the schedule. Respondent provides differing reasons for Complainant's termination: 1) she failed to report to work without notify Respondent and 2) she was "auto terminated" when she went for 30 days without working. Neither of these purported, non-discriminatory reasons are worthy of credence. First, Complainant denies having skipped work without notice, and Respondent has provided no evidence that Complainant was a no-call, no-show. Second, Respondent's policy is to "auto terminate" an employee after 30 days of not working. Yet, documentation submitted by Respondent indicates that Complainant was auto terminated on March 28, just four days after she had worked a shift. Respondent reasons for Complainant's termination and failure to rehire appear to be pretext for unlawful discrimination.

Based upon the above findings, probable cause exists to believe that an unlawful discriminatory practice may have occurred. A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. IC 22-9-1-18, 910 IAC 1-3-5 The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. IC 22-9-1-16, 910 IAC 1-3-6

January 5, 2012
Date

Joshua Brewster, Esq.
Deputy Director
Indiana Civil Rights Commission